

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

1 IN THE MATTER OF
2 TONY GROUT,

3 Appellant,

4 vs.

5 PUGET SOUND AIR POLLUTION
6 CONTROL AGENCY,

7 Respondent.

PCHB No. 536

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

8 THIS MATTER being an appeal of Tony Grout to a notice of civil
9 penalty of \$250.00 for an alleged open-burning violation of respondent's
10 Regulation I; having come on regularly for hearing before the
11 Pollution Control Hearings Board on the 17th day of May, 1974, at
12 Tacoma, Washington; and appellant, Tony Grout, appearing pro se
13 and respondent, Puget Sound Air Pollution Control Agency, appearing
14 through its attorney, Keith D. McGoffin; and Board members present
15 at the hearing being W. A. Gissberg (presiding) and Mary Ellen
16 McCaffree; and the Board having considered the sworn testimony,
17 exhibits, records and files herein and having entered on the 31st
18 day of May, 1974, its proposed Findings of Fact, Conclusions of Law

1 and Order; and the Board having served said proposed Findings, Conclusions
2 and Order upon all parties herein by certified mail, return receipt
3 requested and twenty days having elapsed from said service; and

4 The Board having received exceptions to said proposed Findings,
5 Conclusions and Order from Tony Grout and having considered and
6 denied same; and the Board being fully advised in the premises;
7 now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
9 Findings of Fact, Conclusions of Law and Order, dated the 31st day
10 of May, 1974, and incorporated by this reference herein and attached
11 hereto as Exhibit A, are adopted and hereby entered as the Board's
12 Final Findings of Fact, Conclusions of Law and Order herein.

3 DONE at Lacey, Washington, this 2nd day of July, 1974.

14 POLLUTION CONTROL HEARINGS BOARD

15
16 Walt Woodward
WALT WOODWARD, Chairman

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18 W. A. Gissberg
W. A. GISSBERG, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

1	IN THE MATTER OF)	
	TONY GROUT,)	
2)	
	Appellant,)	PCHB No. 536
3)	
	vs.)	FINDINGS OF FACT,
4)	CONCLUSIONS OF LAW
	PUGET SOUND AIR POLLUTION)	AND ORDER
5	CONTROL AGENCY,)	
)	
6	Respondent.)	
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8 The formal hearing on the appeal of Tony Grout to a notice of
9 civil penalty of \$250.00 for an alleged open-burning violation of
10 respondent's Regulation I came before Board members W. A. Gissberg
11 (presiding) and Mary Ellen McCaffree on May 17, 1974 in Tacoma,
12 Washington. Appellant appeared pro se; respondent through its attorney,
13 Keith D. McGoffin.

14 Having heard the testimony, examined the exhibits and being fully
15 advised, the Board makes the following

16 FINDINGS OF FACT

17 I.

18 On January 20, 1974, at approximately 3:00 p.m., an outdoor fire

EXHIBIT A

1 was observed in progress by the assistant chief of Fire District
2 No. 7 on property owned or controlled by appellant at 20918 Harold
3 Lane East, Spanaway, Washington. The fire contained natural vegetation,
4 at least one rubber tire and small pieces of styrofoam which normally
5 emits dense smoke.

6 II.

7 Notice of Violation No. 9090, a citation for burning restricted
8 material in an open fire and Notice of Civil Penalty No. 1370, the
9 subject of this appeal, were thereafter mailed to appellant, citing
10 Section 9.02 of respondent's Regulation I.

11 III.

12 Appellant's employee had been instructed by appellant to place
13 natural vegetation from his property on an old burn pile thereon.
14 Appellant instructed his employee to load the restricted material on
15 a truck and take the same to a dump. One such truckload of restricted
16 material was hauled to a garbage dump. The employee then ignited the
17 materials which he had placed on the old burn pile. Appellant admits
18 "that there were a few small pieces of styrofoam insulation that was
19 burned in this fire of January 20" of which he was unaware of and which
20 he did not authorize his employee to ignite.

21 IV.

22 Appellant did not instruct his employee to either start or not
23 start the fire, but had instructed his employee to "go out and clean
24 up" his property. The employee testified that he did not place any
25 tire material on the burn pile, but only placed natural vegetative
26 materials thereon. Appellant contends that the tire and styrofoam

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 on the burning pile had been there for a long time and was the result
2 of the residue of an old fire of long standing.

3 V.

4 Section 9.02 of respondent's Regulation I makes it unlawful for
5 any person to cause or allow any outdoor fire containing garbage,
6 asphalt, petroleum products, paints, rubber products, plastics, or
7 any substance which normally emits dense smoke.

8 From which the Board makes the following

9 CONCLUSIONS OF LAW

10 I.

11 Appellant is responsible for the unlawful act of his employee,
12 whether or not he expressly authorized the ignition of the fire on a
13 pile containing restricted materials. The employee did act within the
14 scope of his implied authority.

15 II.

16 Appellant was in violation of Section 9.02 of respondent's
17 Regulation I for causing or allowing an outdoor fire of restricted
18 materials.

19 III.

20 Appellant has taken steps to insure that the incident does not
21 happen again. The civil penalty is the maximum allowable amount which
22 could have been invoked and the mitigating circumstances warrant a
23 partial conditional suspension.

24 Therefore, the Pollution Control Hearings Board makes this

25 ORDER

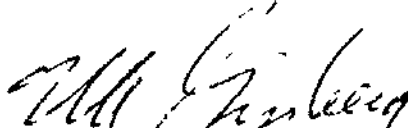
26 The imposition of the civil penalty is affirmed, but \$150.00


27 FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 thereof is suspended on condition that appellant incur no other
2 violation of respondent's Regulation I for a period of one year
3 from the date of this Order.

4 DONE at Lacey, Washington, this 31st day of May, 1974.

5 POLLUTION CONTROL HEARINGS BOARD

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8 W. A. GISSBERG, Member

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10 
11 MARY ELLEN McCAFFREE, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER